SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Hayward Hall of Justice

JOE JOVEN Plaintiff/Petitioner(s) vs. DREYERS GRAND ICE CREAM INC et al Defendant/Respondent (s)	No. 24CV075650 Date: 03/06/2026 Time: 9:30 AM Dept: 520 Judge: Jamilah A. Jefferson ORDER re: Hearing on Motion for Terminating Sanctions filed by JOE JOVEN (Plaintiff) CRS# 323161080486 filed by JOE JOVEN (Plaintiff) on 02/10/2026

The Motion of Plaintiff Joe Joven ("Plaintiff") for Terminating Sanctions, or in the alternative, Issue, Evidence, and Monetary Sanctions, is tentatively **GRANTED IN PART**. Sanctions in the reduced amount of **$84,420.00** are issued against Defendant, payable to Plaintiff forthwith.

At the time of the Tentative Ruling posted in advance of the March 6, 2026 hearing, no Reply had been filed; however, it appeared that it has been served on Defendant on March 2, 2026. At the hearing, the Court acknowledged receipt and review of the initial moving papers, Defendant's opposition (filed by the offending counsel), Plaintiff's Reply, Plaintiff's Supplemental Evidence (addressing evidence from the depositions at issue), Defendant's Sur-Reply (addressing the initial moving papers and the supplemental evidence - filed by different counsel), and Plaintiff's Reply to the Sur-Reply. The parties also argued at length at the hearing.

The Court is not persuaded that, as Defendant argues, the damage done by the offending counsel can be undone. The Court stated as much at the hearing. While the Court can certainly appreciate Defendant's counsel attempts to salvage what remains of the offending counsel's credibility, the Court does not see a path forward on the current record as stated below and at the hearing. The mere fact that Defendant's counsel is proposing a full forensic assessment of the offending counsel's cell phone, supports that everyone involved - Plaintiff and counsel, the Court, and Defendant and counsel - is uncertain about the extent of offending counsel's conduct and whether any current statements from her concerning what happened or did not happen (with the depositions or, in general, with other discovery productions) can be trusted. In addition, it

appears that, as Plaintiff argued at the hearing, there is at least one final discovery order that the offending counsel received from the Court before or concurrently with the offenses with which she failed to comply. Without rehashing the arguments at the hearing (which were reported by the court reporter provided by Defendant - Carol Haraburda) or stated below, the Court is poised to issue terminating sanctions.

Nonetheless, although the Court believes the extreme nature of the misconduct warrants an extreme sanction, it will continue the motion one final time. The parties can submit supplemental materials in advance of the hearing if they so choose - no later than March 23, 2026, with hardcopies or electronic copies delivered directly to the Clerk in Department 520. The parties will be given an opportunity to make final arguments at the hearing in advance of the Court's ruling.

LEGAL STANDARD

Sanctions that may be imposed for abuse of the discovery process include, but are not limited to, issue sanctions (C.C.P. § 2023.030(b)); evidence sanctions (C.C.P. § 2023.030(c)); and terminating sanctions (C.C.P. § 2023.030(d)).

Issue sanctions, evidence sanctions, and terminating sanctions are discretionary with the trial court and are generally imposed as the result of flagrant discovery abuses. (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1244-1247). Terminating sanctions are appropriate in situations involving a chronic pattern of delay or evasiveness severe enough to warrant denial of a trial on the merits. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 994.) Terminating sanctions have been deemed appropriate due to the persistent failure of a defendant to comply with the discovery orders made by the court that resulted in a stay of discovery and a continuance of the trial.

As a general rule, before a court imposes an issue preclusion sanction or dismisses an action for failure to comply with discovery, there must be a court order compelling the offending party to comply with the discovery request. (*Bell v. HF. Cox, Inc.* (2012) 209 Cal.App.41 62, *76; Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1222 [terminating sanction upheld for intentional destruction of evidence].)

In determining the nature of the sanctions for repeatedly and willfully failing to comply with Court orders, the Court should consider the sanctioned party's history as a repeat offender, whether the responding party has acted in good faith and with reasonable diligence, the existence of prior Court orders compelling discovery and prior failures to comply with same, and the importance of the information sought but not complied with. (*Deyo vs. Kilbourne* (1978) 84 Cal.App.3d 771.) The Court may also consider terminating sanctions appropriate when the failure to comply with discovery, basically constituted an attempt to derail the trial date through evasive responses. (*Karlsson vs. Ford* (2002) 140 Cal.App.4th 1202.)

The Court has broad discretion in considering what are appropriate sanctions here, based on the record before it and all of the facts and the record.

DISCUSSION

Here, the Court focuses on the conduct as described in the Reply and initially raised at the hearing for Defendant's Motion for Summary Judgment on February 26, 2026. It is undisputed that Defendants' lead counsel, Jessica Shafer, spent portions of at least two depositions instructing lay witnesses by text message on what to say and what not to say. (Notice of Intent to Rely on Supplemental Evidence ("Notice"), ¶¶ 1-2, Exs. A, B.) The testimony reflects that the witnesses – PMQ Kelly Hupp and Clint Wickensheimer appeared to respond accordingly and the video recordings of Mr. Wickensheimer's deposition reflect his appearing to look down at some object out of the camera's range at multiple points during and while answering questions. (Ibid; Handy Decl., ¶ 16, Ex. K.) Mr. Wickensheimer further admitted that counsel texted him during his February 23, 2026 deposition, and Ms. Shafer instructed him not to answer further questions, alleging that the information sought was privileged. (Id. at ¶ 19, Ex. J.) The text message exchange between counsel and Ms. Hupp on January 29, 2026 during Ms. Hupp's deposition reveal substantive instructions reminding Ms. Hupp what to mention or what to focus on, and even whether to answer a question 'yes' or 'no'. (Notice, Exs. A, B.)

Coaching a witness is improper and is sanctionable as an abuse of discovery. (*Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal.App.4th 1548, 1562.) Defense counsel's conduct made taking a meaningful deposition virtually impossible and shows extensive direction by defense counsel to multiple witnesses as to how to respond.

After reviewing the record with respect to Defendants' counsel's improprieties during the depositions of Ms. Hupp and Mr. Wickensheimer, the Court is persuaded that counsel has on *multiple* occasions crossed the line between appropriate and inappropriate conduct. While cognizant of counsel's ethical obligations to zealously represent its client, counsel also owes ethical obligations to opposing counsel and the Court, and there are limitations on what is permitted in the context of a deposition.

Thus, Defendant's counsel's behavior warrants the imposition of ***substantial*** sanctions of an appropriate nature. Specifically, considering the actions identified by Plaintiff, the Court finds that Defendant's counsel's coaching the witnesses and, thus, interference with the deposition process are **clearly improper** and **cannot be condoned.** Further, as Plaintiff notes, the "bell" cannot be unrung and the prejudice to Plaintiff cannot be undone as witness testimony has been **irrevocably** affected.

Even without the Defendant specifically violating a prior court order, based on counsel's abuses of the discovery process, i.e., allegedly withholding electronical devices and witness statements to thwart Plaintiff's case, case law supports, in certain circumstances, a court exercising its inherent power to dismiss a lawsuit - without a preceding violation of a prior court order. (*See, e.g., Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 740, 758-59, 762,

763-64 [dismissal after an evidentiary hearing established the plaintiff engaged an investigator who stole confidential and privileged documents from the opposition]; *Do it Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 CaI.App.4th 27, 35-36 [noting prior court order unnecessary when such would have been futile]; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1546 [following *Do it Urself, supra*.].)

As is the case, here, the Court "has inherent power to dismiss a case when there is evidence … [a party] has engaged in deliberate and egregious misconduct that makes a fair trial impossible." (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 823.) The other alleged actions Plaintiff complains that Defendant has undertaken (in the moving papers) only **further** exacerbates the seriousness of the conduct at issue with improper witness coaching.

Although the Court has previously issued monetary sanctions for three motions to compel further discovery and for compliance (where compliance still appears to be outstanding), no issue or evidence sanctions were previously imposed.

Nevertheless, because of defense counsel's **egregious** conduct, the Court has **serious** concerns about the **credibility** of the claims made by Defendant in the Opposition and other documents filed and signed by the offending Defendant's counsel. As Plaintiff's counsel confirmed at the hearing (and defense counsel appearing at the hearing did not dispute), the offending defense counsel has been counsel of record for the Defendant and effectively "leading" the litigation since the inception of its defense. It appears clear that the offending defense counsel has been a part of and/or managed and/or directed the litigation for the Defendant making it impossible to "rehabilitate" in any manner the result(s) of her offenses in the litigation - as they likely permeate the entire case.

Accordingly, the Court uses its discretion to **GRANT** Plaintiff's request for terminating sanctions.

CONCLUSION

Plaintiff's motion for sanctions is **granted in part** as to the monetary sanctions requested.

Defendant is ordered to pay Plaintiff **$84,420 in monetary sanctions** forthwith for necessitating the present motion and for opposing without substantial justification, as well as for costs incurred in the subject depositions. (Code Civ. Proc., §§ 2023.010, 2023.030; Handy Decl., ¶¶ 31-37; Tyler Suppl. Decl. ¶¶ 12-19.)

The Hearing on Motion for Terminating Sanctions filed by JOE JOVEN (Plaintiff) CRS# 323161080486 scheduled for 03/06/2026 is continued to 03/27/2026 at 09:30 AM in Department 520 at Hayward Hall of Justice .

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-

represented parties of record.
The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated : 03/06/2026

Jamilah A. Jefferson / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Alameda 03/10/2026 Chad Finke, Executive Officer / Clerk of the Court By: _____ Deputy D. Labrecque
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	
PLAINTIFF/PETITIONER: JOE JOVEN	
DEFENDANT/RESPONDENT: DREYERS GRAND ICE CREAM INC et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 24CV075650

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Hearing on Motion for Terminating Sanctions filed by JOE JOVEN (Plaintiff) CRS# 323161080486 filed by JOE JOVEN (Plaintiff) on 02/10/2026 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Jessica C Shafer
Jessica.shafer@jacksonlewis.com

Justin Hanassab
Miracle Mile Law Group LLP
justin@miraclemilelaw.com

Lisa Sween
JACKSON LEWIS P.C.
Lisa.Sween@jacksonlewis.com

Peter Maretz
Jackson Lewis P.C.
Peter.Maretz@jacksonlewis.com

Chad Finke, Executive Officer / Clerk of the Court

Dated: 03/10/2026

By:

D. Labrecque, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6